

JAN 18 2005

Kreisler 1098-KGB
100725-24
012142us/JH/ml

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Hoborn, et al
SERIAL NO. : 09/914,658
FILED : February 15, 2002
FOR : STABLE RECOMBINANT INFLUENZA VIRUSES FREE OF HELPER VIRUSES
ART UNIT : 1648
EXAMINER : Stacy Brown Chen

January 18, 2005

Mail Stop: Office of Petitions
Hon. Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION TO REVIVE UNINTENTIONALLY ABANDONED
APPLICATION PURSUANT TO 37 CFR § 1.137(b)**

SIR:

Petitioner respectfully requests that the Honorable Commissioner exercise his power and restore the above-identified application to pending status, the application having been unintentionally abandoned.

Introduction

According to 37 CFR § 1.137(b), which set forth the requirements for restoring an unintentionally abandoned application to pending status:

"A grantable petition pursuant to this paragraph must be accompanied by:

- (1) The reply required to the outstanding Office action, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional...; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section."

(1) The Reply

With respect to requirement (1), this application was unintentionally abandoned by mistakenly filing a Notice of Appeal rather than a reply to the first non-final office action on the merits. Applicants are concurrently filing a response to the January 15, 2004 office action with this petition to revive. Applicants are requesting that the Notice of Appeal be rescinded.

(2) The Petition Fee

Regarding requirement (2), the Commissioner is also authorized to charge the fee set forth in § 1.17(m), and any other fees deemed necessary for consideration and/or grant of this petition, to Deposit Account No. 14-1263.

(3) The Statement that the Delay Was Unintentional

Regarding requirement (3), the undersigned hereby states that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

The Notice of Appeal entered on July 15, 2004 was filed inadvertently by the applicants for this application. As the Examiner's rejection of the claims in the office action dated January 15, 2004 was non-final and was the first office action on the merits, applicants mistakenly and unintentionally filed a notice of appeal believing that applicants could file a notice of appeal at that time. Thus, no response to the January 15, 2004 office action was filed.

(4) The Need for a Terminal Disclaimer

Regarding requirement (4), petitioners submit that a terminal disclaimer is not required. By the terms of 37 CFR §1.137(c), a terminal disclaimer must accompany a petition of this type, "[i]n a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995." Since the instant application does not fall into any of these categories, Petitioners submit that a terminal disclaimer is not required.

Closing

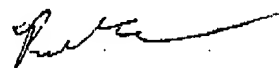
In view of the foregoing, Petitioners submit that all of the requirements of a grantable petition have been met. Accordingly, Petitioners respectfully request that the Honorable Commissioner exercise his power and restore this application to pending status.

Early and favorable action is earnestly solicited.

Respectfully submitted,

NORRIS MCLAUGHLIN & MARCUS, P.A.

By



Paul Lim
Reg. No. 55,383

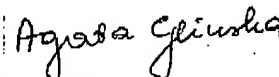
875 Third Ave., 18th Floor
New York, New York 10022
(212) 808-0700

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Petition to Revive Unintentionally Abandoned Application is being facsimile transmitted to: Hon. Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below:

Date: January 18, 2005

By



Agata Glinska

Doc Code:

PTO/SB/17 (12-04v2)

Approved for use through 07/31/2008, OMB 0851-0032
Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).**FEE TRANSMITTAL
for FY 2005**☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT (\$)** **\$1,500.00****Complete If Known**

Application Number	09/914,658
Filing Date	February 15, 2002
First Named Inventor	Gerd HOBOM et al.
Examiner Name	Stacy Brown Chen
Art Unit	1648
Attorney Docket No.	100725-24/ Krelster 1098

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Deposit Account Number: 14-1263 Deposit Account Name: Norris, McLaughlin & Marcus

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☒ Charge any additional fee(s) or any underpayment of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES**Fee Description**

Each claim over 20 (including Reissues)

Each independent claim over 3 (including Reissues)

Multiple dependent claims

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
- 20 or HP =	x	\$50.00	\$0.00
HP = highest number of total claims paid for, if greater than 20.			
Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
- 3 or HP =	x	\$200.00	\$0.00
HP = highest number of independent claims paid for, if greater than 3.			

Fee (\$)	Small Entity Fee (\$)
50	25
200	100
360	180
Multiple Dependent Claims	
Fee (\$)	Fee Paid (\$)

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listing under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/ 50	(round up to a whole)	x \$250.00	\$0.00
				Fee Paid (\$)

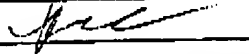
4. OTHER FEE(S)

Non-English specification, \$130 fee (no small entity discount)

Other (e.g. late filing surcharge): Petition to revive unintentionally abandoned application

\$1,500.00

SUBMITTED BY

Signature		Registration No. (Attorney/Agent)	55,383	Telephone	212-808-0700
Name (Print/Type)	Paul S. Lim		Date	January 18, 2005	

This collection of information is required by 37 CFR 1.138. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.